

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11199 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SOMA TEXTILE & INDUSTRIES LTD.

Versus

RAMCHHODBHAI C PATEL

Appearance:

1. Special Civil Application No. 11199 of 1994
MR VIMAL PATEL FOR NANAVATI ASSOCIATES for Petitioner No. 1
MR KV GADHIA for Respondent No. 1
-

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/10/2002

ORAL JUDGEMENT

#. Heard Learned advocate Mr.Vimal Patel on
behalf of the petitioner and Mr.K.V.Gadhiya, learned
advocate appearing on behalf of the respondent.

#. The respondent was working with the petitioner as Textile Designer in Weaving Department. The duration of service of the respondent from 27th May, 1982 to 11th October, 1992. The respondent has retired on 11th October, 1992. Thereafter, he made demand of gratuity amount from the petitioner but the same was not paid by the petitioner. Therefore, the workman respondent herein approached the Controlling Authority under the provisions of Payment of Gratuity Act, 1972. The controlling authority has passed order in Case No.382 / 1992 on 5th August, 1993 and rejected the application submitted by the respondent. Thereafter, the respondent has approached the appellate authority under provisions of the Payment of Gratuity Act, 1972 being Appeal No.19/1993. The said Appeal has been allowed by the appellate authority while setting aside the orders passed by the Controlling Authority by order dated 25th July, 1994.

#. Learned advocate Mr.Vimal Patel has submitted that designation of the respondent, salary of the respondent and duration of service of respondent are not in dispute between the parties. He also submitted that before the Controlling Authority, a detailed statement of salary was produced by the petitioner and even as per the 'salary or the wages' as defined in the Payment of Gratuity Act, 1972, the respondent has not completed continuous service for a period of five years inasmuch as his salary was increased with effect from December, 1986. Therefore, considering the period from May, 1982 to December, 1986, the workman has completed service of four years only and therefore, he is not eligible to the amount of gratuity under the provisions of the Gratuity Act. He also submitted that the appellate authority has committed error in setting aside the orders passed by the Controlling Authority on the ground that the respondent has covered within definition of Section 2[e] of the Gratuity Act and considering the definition of 'Wages', the appellate authority has come to the conclusion that once the Gratuity Act is applicable, then, the same will remain continued to be applied to the establishment and therefore the appellate authority has granted the amount of gratuity on the ceiling of Rs.2500/- and thus, this is a clear basic error committed by the appellate authority and therefore, the order passed by the appellate authority is required to be quashed and set aside by this Court.

#. Learned advocate Mr.K.V.Gadhiya for respondent workman has submitted that the respondent workman had

worked in all for a period of ten years and seven months with the petitioner institution. He submitted that there is no dispute from the respondent with regard to duration of service, salary and designation of the workman concerned. Learned advocate Mr. Gadhiya has supported the decision of the appellate authority and submitted that this being the beneficial law though one year is short in completing period of five years for eligibility of getting gratuity amount that may be considered by this Court.

#. I have considered submissions made by the learned advocates for the parties. The respondent workman was appointed by the petitioner on 27th May, 1982 and he retired from service on 11th October, 1992. From May, 1982 to December, 1986, he was receiving total salary below Rs.2500/- including basic and dearness allowance but in January, 1987 he was receiving salary of Rs.2520.98 ps. A documentary evidence in the form of table is produced at page-41 which shows basic and dearness allowance of the respondent workman. In light of this fact, once the eligibility to receive the amount of gratuity is not satisfied by the respondent, then the respondent is not entitled to the amount of gratuity. Under Section 4 of the Act, the gratuity shall be payable to an employee on the termination of employment after he has rendered continuous service not less than five years. In the instant case, this eligibility condition is not satisfied by the respondent workman. The another aspect is that the definition of employee given in Section 2[e] means any person other than apprentice employed on wages in any establishment, factory, mine, oil field, plantation part, Railway company or shop to do any skilled, semi skilled or unskilled manufacture, supervisory, technical or clerical work, whether the terms of such employment are expressed or implied and whether or not such person is employed in a managerial or administrative capacity but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any Rules providing for payment of gratuity. Initially, the ceiling of wages which applied to the employee was Rs.1600/-. Thereafter, amendment came into force increasing the ceiling upto Rs.2500/-. Thereafter, against the limit of Rs.2500/- is enhanced upto Rs.3500/with effect from 26th November, 1992 and ceiling of Rs.2500/- has been omitted by Act 34 of 1994 with effect from 24th May, 1994. Looking to this amendment also, the case of the respondent is not covered and therefore considering this undisputed fact in respect of designation, ceiling of wages and period of service, it

clearly transpires that the appellate authority has not considered Section 4 of the Payment of Gratuity Act, 1972. Therefore, the respondent has not satisfied the condition of eligibility to receive the amount of gratuity and not completed five years continuous service in wages less than Rs.2500/- and as is evident from the record, the respondent has completed only four years and therefore the respondent is not entitled the amount of gratuity according to the provisions of the Payment of Gratuity Act, 1972. In the case on hands, this aspect has not been taken into account by the appellant authority and the appellate authority has ignored the documents produced by the petitioner pointing out the salary of the respondent workman. Even excluding the other service benefits and merely considering the basic and Dearness Allowance, then also, the respondent workman has not satisfied the definition of employee because he has received the salary below Rs.2500/- for a period from May, 1982 to December, 1986 and that is how he has not completed continuous service of five years and therefore, he is not entitled to the amount of gratuity from the petitioner.

#. In view of legal position discussed above, this aspect has not been taken into account by the appellate authority while allowing the appeal of the respondent and therefore the appellate authority has committed gross error which found apparently on the face of the record and therefore the order passed by the appellate authority in Appeal No.19 / 1993 dated 25th July, 1994 requires to be set aside.

#. In the result, present petition is allowed. The impugned order passed by the appellate authority in Appeal No.19 / 1993 dated 25th July, 1994 is hereby quashed and set aside. Rule is made absolute with no order as to costs.

#. However, at the time of issuing notice by this Court, the petitioner was directed by this Court to deposit Rs.10,000/- before the Controlling Authority at Ahmedabad in connection with Case No.328 / 1992. Learned advocate Mr.Vimal Patel has shown to this Court a receipt issued by the controlling authority against deposit of Rs.10,000/- deposited by the petitioner in pursuance of the order passed by this Court on 26th September, 1994. Therefore, it is directed to the Controlling Authority, Ahmedabad to pay the amount of Rs.10,000/- back to the petitioner by account payee cheque. A xerox copy of the receipt produced before this Court is taken on record of this case.

Date : 14-10-2002 [H.K.Rathod, J.]

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